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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

HILLEAL A. GRANT,

Petitioner,

vs.

F. E. FIGUEROA,

Respondent.

CASE NO. 12-cv-939-MMA (RBB)

**ORDER DENYING
PETITIONER'S APPLICATION
FOR CERTIFICATE OF
APPEALABILITY**

[Doc. No. 8]

On April 16, 2012 Petitioner Hilleal A. Grant, a state prisoner proceeding *pro se*, filed a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254, challenging his August 8, 2008 state court conviction. [Doc. No. 1.] Along with his petition, Petitioner filed a motion to proceed IFP, which the Court denied on April 18, 2012. [Doc. Nos. 4, 5.] On April 19, 2012, Petitioner filed a notice of appeal, together with a request for this Court to issue a certificate of appealability. [Doc. Nos. 7, 8.]

“The district court must issue or deny a certificate of appealability when it enters a *final* order adverse to the applicant.” Rule 11 foll. 28 U.S.C. § 2254 (emphasis added). A petitioner may not seek an appeal of a claim arising out of state court detention unless the petitioner first obtains a certificate of appealability from a district judge or a circuit judge under 28 U.S.C. § 2253. Fed. R. App. P. 22(b). Under 28 U.S.C. § 2253(c)(1), a certificate of appealability will issue only if the petitioner makes a substantial showing of the denial of a constitutional right.

1 Upon due consideration, the Court concludes a certificate of appealability should not issue because
2 the Court has not issued a final order and therefore Petitioner has not made a substantial showing
3 of the denial of a constitutional right. Accordingly, the Court declines to issue a certificate of
4 appealability, and **DENIES** Petitioner's motion. [Doc. No. 8.]

5 **IT IS SO ORDERED.**

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7 DATED: May 29, 2012

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9 Hon. Michael M. Anello
10 United States District Judge
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